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No. 93-1472

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS COUNTY OF CHARLESTON; J. ALTON CANNON, JR., SHERIFF OF CHARLESTON COUNTY; AND ROBERT MILLER, JR., UNDERSHERIFF OF CHARLESTON COUNTY

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QUESTIONS PRESENTED

The Respondents, the County of Charleston, the Honorable J. Alton Cannon, Jr., Sheriff of Charleston County, and the Honorable Robert Miller, Jr., Undersheriff of Charleston County, believe that the only questions presented, as they relate to them, are properly stated as follows:

I. Whether the lower courts were correct in holding that a political subdivision and its law enforcement officials were absolutely immune from liability under 42 *U.S.C.* § 1983 for their actions in this case since such actions were undertaken pursuant to a judicial order?

II. Whether the lower courts were correct in holding that the Respondent, County of Charleston, was not the moving force behind the Petitioner's alleged deprivation of constitutional rights?

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The Respondents, County of Charleston; J. Alton Cannon, Jr., Sheriff of Charleston County; and Robert

Miller, Jr., Undersheriff of Charleston County (collectively "Charleston County"), respectfully request that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991. That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix

A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates*, 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States*, 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231 (1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This *pro se* civil rights action came before the District Court on the joint Rule 12(b)(6), *FRCP*, Motion to Dismiss of the Respondents, Charleston County; the Honorable J. Alton Cannon, Jr., Sheriff of Charleston County; and the Honorable Robert Miller, Jr., Undersheriff of Charleston County. The Petitioner's action against Charleston County arose out of his incarceration at Lieber Correctional Institution ("Lieber") on January 11, 1989, pursuant to the Order of the Respondent, the Honorable William T. Howell ("Judge Howell"). Judge Howell issued an order on January 6, 1989, incarcerating the Petitioner for his willful failure to connect to a sewer line maintained by the Respondent, James Island Public Service District ("JIPSD"). The Petitioner claimed that the Order was "suspect, unfair, and violative of his civil rights." Charleston County's motion to dismiss was principally based

on the Petitioner's failure to state a claim upon which relief could be granted.

In 1984, the JIPSD instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[1] The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[2] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause why an Order should not be issued finding the Petitioner in contempt of Court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987, Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him sixty (60) days to hook up to the JIPSD's sewer system, in order to avoid incarceration. The Petitioner petitioned the South Carolina Supreme Court for a Writ of Supersedeas to Stay Judge Howell's contempt sentence. The Supreme Court denied the Petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by hooking up to the sewer system. On January 6, 1989, Judge Howell ordered the Petitioner

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[1] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) (*"JIPSD v. Seigel"*).

[2] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

to begin serving his contempt sentence on January 11, 1989. The Respondent, J. Alton Cannon, transported the Petitioner to Lieber and relinquished custody to the Respondent, South Carolina Department of Corrections ("SCDOC"). The Petitioner served only one (1) night at Lieber before he was released. Thereafter, on February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action was Charleston County, Cannon, and Miller. Those parties, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See*, 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the District

Court's Order in an unpublished *per curiam* opinion rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the decisions below which dismissed his action against all of the Respondents, including Charleston County, Cannon, and Miller.

SUMMARY OF THE ARGUMENT

In all matters related to this case, these Respondents acted solely in their capacity as a municipal corporation and its agents, respectively. The doctrine of derivative judicial immunity barred the Petitioner's Complaint against these Respondents since the alleged wrongful acts were taken pursuant to a state court judicial order. In addition, as to Respondent Charleston County, the Petitioner's Complaint failed to identify any custom or policy of Charleston County which allegedly deprived the Petitioner of his rights. The lower courts were correct in dismissing the Petitioner's Complaint against these Respondents.

ARGUMENT

The Petitioner's action against these Respondents was based on his claim that Respondents Cannon and Miller and other deputies "entered his residence and [Respondent] Cannon transported him to Lieber Correctional Institute on January 11, 1989." The Petitioner was transported to Lieber pursuant to an Order issued by

Judge Howell on January 6, 1989, incarcerating the Petitioner for six (6) months for contempt of court. The Petitioner did not allege any other act or omission on the part of Charleston County, Cannon, or Miller. In addition, he did not seek any type of declaratory or injunctive relief against these Respondents.

I. THE PETITIONER'S 42 *U.S.C.* § 1983 CLAIM AGAINST CHARLESTON COUNTY, CANNON, AND MILLER WAS BARRED BECAUSE THE ALLEGED WRONGFUL CONDUCT WAS TAKEN PURSUANT TO A JUDICIAL ORDER.

Charleston County, Cannon, and Miller, are immune from liability for damages pursuant to 42 *U.S.C.* § 1983 because the allegedly wrongful action was taken pursuant to a judicial order.

A motion under Rule 12(b)(6), *FRCP*, must be granted by a District Court if an affirmative defense is apparent from the face of the Complaint.[3] The lower courts properly dismissed the Complaint since the allegations of the Complaint demonstrated that Charleston County, Cannon, and Miller were absolutely immune from the claim. *Imbler v. Pachtman*, 424 U.S. 409 (1976). *See, Phillips v. Singletary*, 350 F. Supp. 297 (D.S.C. 1972); *Wetherington v. Phillips*, 380 F. Supp. 426 (E.D.N.C. 1974). *See also, Green v. Maraio*, 722 F.2d 1013 (2d Cir. 1983); *C.M. Clark Ins.*

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[3] Material which was submitted as a part of the Complaint, as well as items in the public record, could be and presumably was considered by the District Court. *Phillips v. Bureau of Prisons*, 591 F.2d 966 (D.C. Cir. 1979) (citing 5 C. Wright and A. Miller, *Federal Practice and Procedure*, § 1357 (1969)).

Agency, Inc. v. Maxwell, 479 F.2d 1223 (D.C. Cir. 1973); *Kauffman v. Moss*, 420 F.2d 1270 (3rd Cir. 1970), *cert. denied*, 400 U.S. 84 (1970).

It was clear from the face of the Complaint that these Respondents were absolutely immune from the Petitioner's claim by virtue of the operation of derivative judicial immunity. These Respondents' actions were taken, undisputedly, pursuant to Judge Howell's January 6, 1989, order. This Court has pronounced and followed the doctrine of judicial immunity at common law for more than a century. *Bradley v. Fisher*, 13 Wall. 335 (1872). A judge is immune from civil liability for his judicial acts "however erroneous the act may have been and however injurious in its consequences it may have proved to the Plaintiff". *Id.*, 13 Wall. 335, 347. Nor can this "exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed." *Id.* The lower courts applied these long standing principles and properly dismissed the Petitioner's Complaint. This Court has also held that the common-law doctrine of judicial immunity applies to claims brought against judges pursuant to 42 *U.S.C.* § 1983. *Pierson v. Ray*, 386 U.S. 547 (1967). It is clear that this doctrine shielded Judge Howell from civil liability pursuant to 42 *U.S.C.* § 1983.

With this judicial immunity firmly established, the courts have *extended* absolute immunity to public officers who act in obedience to a judicial act or at the court's direction. *McCray v. State of Maryland*, 456 F.2d 1 (4th Cir. 1972); *Lockhart v. Hoenstine*, 411 F.2d 455 (3rd Cir. 1969), *cert. denied*, 396 U.S. 941 (1969); *United States ex rel. Smith v. Heil*, 308 F. Supp. 1063 (E.D. Pa. 1970). This defense is

most properly called a "derivative immunity." *Id.*, 308 F. Supp. 1063, 1066. Accord, *McCray*, 456 F.2d 1. The defense is based on the premise that it would be manifestly unfair to hold public officials liable for carrying out a judge's order when a judge is immune from liability. *Id.*, 456 F.2d 1, 5 n.11.

The Petitioner's Complaint acknowledged that Judge Howell ordered his incarceration at Lieber. The Order provided that "the Charleston County Sheriff's Department will pick up the [Petitioner] and transport him to Lieber Correctional Institute for service in their medical facility." Cannon and Miller had no alternative but to carry out the directives of Judge Howell's Order.

In *Green v. Maraio*, 772 F.2d 1013, the Second Circuit considered a 42 *U.S.C.* § 1983 claim against a trial judge and court reporter for allegedly altering a defendant's criminal trial transcript. In affirming the dismissal of the Complaint against the court reporter, the Second Circuit reasoned as follows:

> [I]n this case, there are several reasons why Maraio's defense of qualified immunity can support the grant of a Fed.R.Civ.P. 12(b)(6) motion for failure to state a claim upon which relief can be granted. First, Green's own complaint alleges that Maraio, in her capacity as a court reporter, acted pursuant to the judge's instructions. Thus, the complaint itself establishes the circumstances required as a predicate to a finding of qualified immunity, and consequently, there is no reason to require an answer, a hearing, or a trial. *See, Harlow v. Fitzgerald*, 457 U.S. 800, 807-08, 102 S. Ct. 2727, 2732-33, 73 L.Ed.2d 396 (1982). Once it was established that the basis for

Maraio's action was the judge's instructions, inquiry into other questions of motivation or good faith became unnecessary.

Further, allowing a [Rule] 12(b)(6)[, *FRCP*,] dismissal whenever the basis for finding qualified immunity applicable is established by the complaint itself 'permit[s] "[i]nsubstantial lawsuits [to] be quickly terminated." ' *Id.* at 814, . . . (quoting *Butz v. Economou*, 438 U.S. 478, 507 . . . (1978); *see also, Hanrahan v. Hampton*, 446 U.S. 754 . . . (1980) (noting that *Butz* 'caused the judiciary to exercise their authority under the rules of procedure in order to protect official defendants from groundless claims'). (Powell, J., concurring in part and dissenting in part); cf. *Briscoe v. Lahue*, 460 U.S. 435 . . . (1983) ('even the processing of a complaint that is dismissed before trial consumes a considerable amount of time and resources').

Last, we note that dismissal pursuant to [Rule] 12(b)(6)[, *FRCP*,] was proper as to Maraio '[s]ince judges are immune from suit for their decisions, [and therefore] it would be manifestly unfair to hold liable the ministerial officers who carry out the judicial will.' *McCray v. State of Maryland*, 456 F.2d 1, 5 n. 11 (4th Cir. 1972). Maraio is alleged by Green to have altered Green's transcript pursuant to Judge Ingrassia's explicit instructions. Clearly, it was the judge's decision to make the change, not the court reporter's. Under these circumstances, it would be manifestly unfair to allow Maraio to be subjected to liability when she was acting within the scope of the judge's instructions and was simply acting as an arm of the court in compliance with the exercise of his judicial authority.

Id., 772 F.2d 1013, 1019. There was no reason for the lower courts to hold differently below. The lower courts properly dismissed the Appellant's Complaint.

II. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT CHARLESTON COUNTY ACTIVELY CAUSED DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

The Petitioner's Complaint was totally devoid of any facts sufficient to state a claim against Respondent Charleston County. In order to establish a governmental entity's liability under 42 *U.S.C.* § 1983, the Petitioner was required to establish that the entity is a "moving force behind the deprivation." *Polk County v. Dodson*, 454 U.S. 312 (1981) (quoting *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978)). Thus, the entity's "policy or custom" must have played a part in the violation of federal law. *Monell*, 436 U.S. 658, 694; *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985).

As this Court stated in *Monell*:

> [A] local government may not be sued under [42 *U.S.C.*] § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by it or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under [42 *U.S.C.*] § 1983.

Id., 436 U.S. 658, 694.

The Petitioner failed to make any allegation about any wrongful policy or custom of Charleston County. The only allegations that concerned Charleston County, at all, were actually allegations about the actions of Respondent Sheriff Cannon and Miller, and their acts undoubtedly were taken pursuant to a judge's order.

CONCLUSION

The Petitioner's Complaint against Respondents Charleston County, Cannon, and Miller was barred by the doctrine of derivative judicial immunity, since the alleged wrongful acts were taken pursuant to Judge Howell's judicial order. In addition, as to Respondent Charleston County, the Petitioner's Complaint was further defective because it failed to identify any custom or policy of Charleston County which allegedly deprived the Petitioner of his rights. The lower courts properly dismissed the Complaint. Consequently, these Respondents respectfully request that the

Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

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Dated: April 12, 1994